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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,069	11/26/2003	Muncharu Itoh	031284	7768

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EXAMINER

NOTE, JANIS L

ART UNIT	PAPER NUMBER
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1756

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/721,069

Applicant(s)

ITOH, MUNEHARU

Examiner

Janis L. Dote

Art Unit

1756

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 08 March 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see the attached, paragraph 1. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 5 and 6.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached, paragraph 2.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

Janis L. Dote
JANIS L. DOTE
PRIMARY EXAMINER
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1700

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1. The proposed amendment filed on Mar. 3, 2006, after the mailing of the final rejection on Sep. 7, 2005, raises the issue of new matter. The proposed amendments to paragraph [0045] in the specification, inserting the publication years 1995 and 1996, respectively, of the JIS standards JIS K 6301 and JIS K 6255, raise the issue of new matter under 35 U.S.C. 132. There is no objective evidence on the present record showing that said standards were published in those years.

The proposed amendments to claims 1 and 5 also raise new issues. The proposed amendments to claim 1: (1) add the limitation that the charge amount is -- measured by aspirating and collecting the toner with an aspirating type charge amount analyzer --; (2) delete the limitation that the particle diameter of the external additive particles is a "volume average primary particle diameter"; and (3) change the amount of external particles per single colored polymer particle from "3-500" to -- 10-500 --. Said charge limitation, said amounts, and said particle diameter of the external additive particles that does not have to be a volume median value were not present in the claims when the final rejection was mailed. In addition, the added phrase "aspirating type charge amount analyzer" raises a rejection under 35 U.S.C. 112, second paragraph, regarding the scope of the term "type." The proposed amendment to claim 5

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changes the portion of colored polymer particles having a diameter not larger than 4 μm from "3-70" number percent to -- 3-9.1 -- number percent. Said portion was not present in the claims when the final rejection was mailed.

2. The examiner's refusal to enter the amendment and the Rule 132 declaration, filed on Mar. 3, 2006, after the final rejection, renders applicants' arguments regarding said amendment and declaration moot. Accordingly, for the reasons discussed in the final rejection, paragraph 9, the rejection of claims 1-3 under 35 U.S.C. 103(a) over Ishikawa combined with the other cited reference stands. Furthermore, contrary to applicants' assertion that Masuo does not disclose the charge amount of the toner, as discussed in the final rejection, Masuo teaches that its toner particles in example 10 of Masuo have an absolute charge value of 36 $\mu\text{C/g}$ in a toner layer formed on a developing roller in an environment of "normal" temperature of 23°C and "normal" humidity of 50% relative humidity. The Masuo absolute charge value of 36 $\mu\text{C/g}$ is within the range of 20-70 $\mu\text{C/g}$ recited in instant claim 1. Accordingly, for the reasons discussed in the final rejection, paragraphs 10-13, the rejections under 35 U.S.C. 103(a) of claims 1-3, 5, and 6 over Masuo combined with the other cited references stand.